

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

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| Applicant's or agent's file reference 345766/D20919 | FOR FURTHER ACTION | See Form PCT/IPEA/416 |
| International application No. PCT/FR2004/000085 | International filing date (<i>day/month/year</i>) 16.01.2004 | Priority date (<i>day/month/year</i>) 17.01.2003 |
| International Patent Classification (IPC) or national classification and IPC A23L 1/30, A61K 35/78, A23L 1/30 | | |
| Applicant INSTITUT PHYTOCEUTIC | | |

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|---|--------------|---|-----------|---------------------|--------------------------|------------|----------|--------------------------|-------------|--|--------------------------|------------|----------------------------|-------------------------------------|-----------|---|--------------------------|------------|-------------------------|--------------------------|-------------|--|--------------------------|--------------|---|
| <p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 4 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>4. This report contains indications relating to the following items:</p> <table style="margin-left: 20px;"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table> | | <input checked="" type="checkbox"/> | Box No. I | Basis of the report | <input type="checkbox"/> | Box No. II | Priority | <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | <input type="checkbox"/> | Box No. IV | Lack of unity of invention | <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | <input type="checkbox"/> | Box No. VI | Certain documents cited | <input type="checkbox"/> | Box No. VII | Certain defects in the international application | <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. II | Priority | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention | | | | | | | | | | | | | | | | | | | | | | | |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VI | Certain documents cited | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application | | | | | | | | | | | | | | | | | | | | | | | |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application | | | | | | | | | | | | | | | | | | | | | | | |

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| Date of submission of the demand 26-10-2004 | Date of completion of this report 19-04-2005 |
| Name and mailing address of the IPEA/ | Authorized officer |
| Facsimile No. | Telephone No. |

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT / FR2004/000085

Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- international search (Rule 12.3 and 23.1(b))
 - publication of the international application (Rule 12.4)
 - international preliminary examination (Rule 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):
- the international application as originally filed/furnished
 the description:
 pages 1-10 as originally filed/furnished
 pages* _____ received by this Authority on _____
 pages* _____ received by this Authority on _____
- the claims:
 nos. 14-22 as originally filed/furnished
 nos.* _____ as amended (together with any statement) under Article 19
 nos.* 1-13 received by this Authority on 28.10.2004 with the letter submitted on 28.10.2004
 nos.* _____ received by this Authority on _____
- the drawings:
 sheets _____ as originally filed/furnished
 sheets* _____ received by this Authority on _____
 sheets* _____ received by this Authority on _____
- a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.
3. The amendments have resulted in the cancellation of:
- the description, pages _____
 - the claims, nos. _____
 - the drawings, sheets/figs _____
 - the sequence listing (*specify*): _____
 - any table(s) related to sequence listing (*specify*): _____
4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- the description, pages _____
 - the claims, nos. _____
 - the drawings, sheets/figs _____
 - the sequence listing (*specify*): _____
 - any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/FR2004/000085

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| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|------------------|--|

1. Statement

| | | | |
|-------------------------------|--------|------|-----|
| Novelty (N) | Claims | 1-22 | YES |
| | Claims | | NO |
| Inventive step (IS) | Claims | 1-22 | YES |
| | Claims | | NO |
| Industrial applicability (IA) | Claims | 1-22 | YES |
| | Claims | | NO |

2. Citations and explanations (Rule 70.7)

1. The amendments to claims 1 and 7 (1-13) submitted with the letter of 28 November 2004 are acceptable (PCT Article 34(2)(b)) (claims 7, 16 and 20; page 1, lines 8-9; page 3, lines 4-7; page 6, lines 16-18 of the original version).

2. In the present report, reference is made to the following document:

D1: US-A-6 022 718 (IWAI KAZUO ET AL)
8 February 2000 (2000-02-08).

The present application (claims 1-13 and 15-22) and document D1, which is considered to be the most relevant prior art, relate to thermogenesis-stimulating compositions based on capsaicinoids and a vegetable and/or mineral oil. Claim 1 suggests the use of vegetable and/or mineral oil in combination with a lipophilic additive that is solid or pasty at ambient temperature, in order to reduce the irritant effects of capsaicinoids on the gastric mucosa. None of the documents in the search report proposes the use of thermogenesis-

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| Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|---|
| | <p>stimulating compositions based on capsaicinoids and a vegetable and/or mineral oil in combination with a lipophilic additive that is solid or pasty at ambient temperature, in order to reduce the irritant effects of capsaicinoids on the gastric mucosa. It would not be obvious for a person skilled in the art to use, with a corresponding effect, the solutions proposed in claims 1, 15 and 19 (2-13, 16-18 and 20-22) of the present application.</p> <p>None of the search report documents describes the composition in the form of soft capsules as per claim 14. The solution proposed in claim 14 of the present application is considered to be inventive to a person skilled in the art.</p> <p>Claims 1-22 fulfil the PCT requirements of novelty and inventive step (PCT Article 33(2) and 33(3)).</p> |